

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Petition for Declaratory Ruling to Clarify)
Provisions of Section 332(c)(7)(B) to Ensure)
Timely Siting Review and to Preempt under)
Section 253 State and Local Ordinances that)
Classify All Wireless Siting Proposals as)
Requiring a Variance)
_____)

WT Docket No. 08-165

**COMMENTS OF GREATER METRO TELECOMMUNICATIONS
CONSORTIUM IN SUPPORT OF NATOA ET AL PETITION FOR
RECONSIDERATION**

The Greater Metro Telecommunications Consortium ("GMTC") submits these comments in support of the Petition for Reconsideration or Clarification filed by the National Association of Telecommunications Officers and Advisors, the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association.¹ GMTC is an intergovernmental agency, created pursuant to Colorado law, which is comprised of 34 local governments located mostly in the Denver metropolitan area.² GMTC communities extend from the plains east of Denver to the foothills at the base of the Rocky Mountains. These jurisdictions comprise an area of approximately 645 square miles, and represent a population of approximately 2.3 million people.

¹ In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Reconsideration or Clarification*, WT Docket No. 08-165, filed Dec. 17, 2009 (Petition).

² Adams County, Arapahoe County, Douglas County, Jefferson County, the Cities of Arvada, Aurora, Brighton, Centennial, Cherry Hills Village, Commerce City, Dacono, Durango, Edgewater, Englewood, Federal Heights, Glendale, Golden, Greenwood Village, Lakewood, Littleton, Lone Tree, Louisville, Northglenn, Parker, Sheridan, Thornton, Westminster, Wheat Ridge, the Towns of Castle Rock, Columbine Valley, Erie, Frederick, the City and County of Broomfield, and the City and County of Denver.

I. BACKGROUND

The Petition asserted that the Federal Communications Commission (“Commission”) should reconsider, or at a minimum clarify, the 30 day deadline imposed on local authorities to review an application for completeness or waive their ability to “toll” the 90 day or 150 day deadlines established by the Order to take final action on a wireless facilities siting application.³ The Petition cites both legal and practical problems that require reconsideration of the 30 day deadline.

GMTC fully supports and agrees with the Petition’s legal analysis and believes that the Commission exceeded even its own interpretation of its authority under Section 332(c)(7). We believe that this internal 30 day deadline is a new limitation placed on local zoning authorities by the Commission and not simply an interpretation of Section 332(c)(7). As such we fully adopt the Petition’s legal arguments against the 30 day deadline.

We submit these comments separately to provide the Commission with examples of how the 30 day deadline will impact local governments, such as the municipal and county members of GMTC, in practice.

II. EXAMPLES OF PRACTICAL PROBLEMS WITH 30 DAY INCOMPLETENESS DEADLINE

It is generally not problematic to review an application for completeness within 30 days. However, there are a variety of issues that can come up after 30 days and after an application can preliminarily be deemed complete. These comments will describe some of these issues.

³ In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Declaratory Ruling*, WT Docket No. 08-165, FCC 09-99 (Nov. 18, 2009) (“Order”).

Land use applications are often referred to other entities for review and comment. Some of those entities are public utilities; some are other governmental entities, such as regional drainage and flood control agencies, or the U.S. Military. A local jurisdiction cannot guaranty that it will receive feedback from another government agency fast enough to consider the information and then make a request of the applicant for more information (if requested by the commenting entity) within 30 days of the application's filing. For example, the City of Aurora, Colorado is adjacent to Buckley Air Force Base ("Buckley"). There have been applications for land use authority in Aurora to locate wireless facilities close to the base that were referred to Buckley for review and comment. A response might ask for clarification as to certain items in the application, or request a specific modification before the application moves forward, in order to avoid interference with flight operations on the base.

If the time frame for final local action is not tolled during the time that a local jurisdiction is waiting for feedback from another governmental agency over which it has no control, or if there is no tolling for the period during which an applicant is responding to another agency's request (even those that are made more than 30 days after the filing of the application), the locality might be forced to act without all of the relevant information it needs to address public health and safety concerns. Without that information, a local jurisdiction might be inclined to deny an application, which could lead to unwanted and otherwise unnecessary litigation.

All GMTC jurisdictions are required by state and/or local law to have notice posted on properties, and many require publication in a local newspaper, before certain kinds of land use hearings, such as rezonings, variances, and conditional use applications can be held. While it does not occur frequently, each of our jurisdictions has experienced the need to postpone a public hearing on a land use matter, due to the fact that an error was made by an applicant in posting or

publishing notice of an upcoming proceeding. These issues never arise within 30 days of an application being filed. To the contrary, they often do not come to light until the day of a scheduled hearing. A local government should not be penalized for delaying a hearing in order to comply with state and/or local notification requirements.

At its regular meeting on January 21, 2010, the GMTC Board of Directors discussed these issues and unanimously concurred with a concern raised by the Town of Castle Rock, namely, that an unintended consequence of the Commission's decision will be to *increase* the period of time between the date an application is filed and final action. Castle Rock, like many of its GMTC colleagues, accepts an application as complete, and begins the process of moving toward a public hearing, even when the applicant is required to obtain approval from another government agency.

In Colorado, an application within municipal boundaries might also require feedback on public safety or related issues from the County, or regional governmental entities like the Urban Drainage & Flood Control District, or a fire protection district. Applications are generally processed concurrently with an applicant's efforts to obtain these other approvals. The matter may even be scheduled for final approval, understanding that a Council or Board might vote to approve subject to a condition that the applicant subsequently receive the other government approvals before the land use permission becomes effective. However, if the local government must take final action on the land use application within 90 or 150 days, with no opportunity for tolling to address another entity's pending action, GMTC jurisdictions will consider advising applicants for wireless facilities that applications will not be accepted until they include all ancillary approvals that may be required from other governmental entities.

III. CONCLUSION

In conclusion, the GMTC supports the Petition and urges the Commission to reconsider or clarify the Order as to the 30 day review for incompleteness deadline.

Respectfully submitted this 22nd day of January 2010.

**GREATER METRO TELECOMMUNICATIONS
CONSORTIUM**

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